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EXAMINER

STORMER, RUSSELL D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3617

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,262

Applicant(s)

ALLY ET AL.

Examiner

Russell D. Stormer

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 14-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                                    |

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, drawn to a wheel system, classified in class 305, subclass 1.
  - II. Claims 14-22, drawn to a method for utilizing a wheel system, classified in class 280, subclass 5.26.
  - III. Claims 23 and 24, drawn to a method for making a wheel system, classified in class 164, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as a process that does not require transferring weight from one side of a mobile vehicle to another side of a mobile vehicle and merely requires a concerted effort of pushing in a single longitudinal direction by a user.

Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process

(MPEP § 806.05(f)). In the instant case the process as claimed can be use to make a materially different product such as a wheel system that does not have a plurality of curvature portions but merely a wheel with an integral hub.

Inventions II and III are related as process of use and process of making. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with a product made by a materially different process or (2) the product made by the process can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with a product made by a materially different process such as a base having a plurality of wheels attached through axle held in hubs that are welded to the base.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Dwayne Bentley on January 24, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the wheel system which comprises just two wheels as set forth in claim 5, the mobile vehicle being a stroller as set forth in claim 16, and the mobile vehicle being a scooter as set forth in claim 17 must be shown or the features canceled from the claims.

#### **No new matter should be entered.**

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show  
1) any of the vehicles set forth near the top of page 5 with the exception of the cart;

2) the vehicle utilizing one, three, four, or more wheel systems as set forth in line 10 of page 5;

3) the center of gravity of the wheel as described in lines 13-14 of page 6 and later on page 7;

4) the angles of the curvature portions described on page 6 and set forth in claims 9 and 10 are not depicted in any of the drawings.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The abstract of the disclosure is objected to because it is not descriptive of the invention. Correction is required. See MPEP § 608.01(b).
5. The disclosure is objected to because of the following informalities:

The statement that the wheel systems include the center of gravity that is higher up and farther out to the center, then the center of gravity for standard wheels in lines 1-3 of page 7 is not understood. The sentence appears to be a sentence fragment with

no clear direction. Further, it is not clear what is meant by “higher up” and “farther out” as used in this sentence.

Appropriate correction is required.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. The disclosure is objected to because it does not describe how the arc angle of the curvature portions of the base enable the cart to be easily maneuverable to traverse or slide over any type of surface. It is clear from the specification how the wheel system is used to ascend or descend stairs, but there is no disclosure as to how the assembly provides for easy maneuverability over other surfaces such as those described on page 6, or what is considered to be “easy maneuverability” over such surfaces.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. Claims 1 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. This is a non-enablement rejection.

It is not clear from the specification how the curvature portions of the base provide for easy maneuverability of the wheels.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 1 and 11 it is not clear how the curvature portions provide for easy maneuverability of the plurality of wheels.

In claim 11, it is also not clear how the center of gravity enables the wheels to be moved with less energy, or what the amount of energy is less than.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 7, 9, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sawada.

13. Claims 1, 7, 9, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gross.

14. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Barron.



The plurality of wheels 20 are retained in curvature portions 15 and since the wheels 20 allow the wheel system to slide sideways, they provide for easy maneuverability of the plurality of wheels.

15. Claims 1, 6, 7, 9, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Decelles et al.

Note that the wheel assemblies may comprise three or four wheels.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

18. Claims 2, 3, 4, 8, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decelles et al.

Decelles et al is applied as set forth in paragraph 14 above and further with respect to claims 2-4 in that the tensile strength of the curvature portions would have been an obvious mechanical expedient based on the intended use of the wheel, the intended load, etc.

With respect to claims 8, 12, and 13, the radius of the curvature portions, and the distance of the center of gravity to the plurality of wheels would have been an obvious as a mechanical expedient based on the size of the wheel systems, which in turn would be based on the intended use of the wheels systems and the vehicle they were used on.

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other wheel systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-3768. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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2/10/05

  
RUSSELL D. STORMER  
PRIMARY EXAMINER  
2/10/05